

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3756 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GANPATBHAI RANCHHODBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR SV RAJU for Petitioner

MS HANSA PUNANI FOR THE STATE

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 13/04/99

ORAL JUDGEMENT

The petitioner challenges the decision of the Gujarat Revenue Tribunal dated 27.12.1985 rejecting the revision application of the petitioner and confirming the order of the appellate authority which in turn confirmed the decision of the Mamlatdar declaring surplus land under the provisions of section 11 of Gujarat Agricultural Lands Ceiling Act 1960 (hereinafter referred

to as the Act).

#. The only contention which was raised at the time of the arguments was that the Tribunal failed to consider the petitioner's entitlement under section 6(3C) of the Act which lays down that where a family or a joint family irrespective of the number of members includes a major son, then each major son shall be deemed to be a separate person for the purposes of sub-section(1) of section 6.

#. It appears from the decision of the Tribunal that taking into consideration of proviso to sub section (3B) to section 6 of the Act and since there were only 5 members and not more than 5, it held that the family was not entitled to hold any additional land in excess of the ceiling area. The Tribunal did not consider the petitioners case under sub section (3C) of section 6 of the Act. But it did take into account the fact that the family consisted of the petitioner, his mother, wife, sister and two daughters. In Khachar Bhikhubhai Unadbhai & ors. vs. State of Gujarat & anor. 38(1)GLR 132 in the context of the provision section 6 (3C) of the Act it was held by the Supreme Court that the view of this Court in State of Gujarat vs. Patel Kala Sana reported in 35(1) GLR 448 that a family or joint family consisting of only the mother and her major son or sons, would also get benefit of sub section (3C) of section 6 of the Act. The Tribunal did not have the benefit of this decision when it decided the revision application on 27.12.85. Though the petitioner does not seem to have articulated the contention that he was entitled to the benefit of sub-section (3C) of section 6 there is a case made out in view of the decision of the Supreme Court in Kachar Bhikhabhai's case (Supra) and of this Court in Patel Kala Sana's case (Supra) that the Tribunal should consider the contention and reach its own decision in the matter in light of the said decisions and the provisions of section 6(3C) of the Act. The decision of the Tribunal is therefore, set aside and the matter is remitted to the Tribunal to consider the contention of the petitioner based on the principles of section 6(3C) of the Act and decide the matter in accordance with law expeditiously. Status quo is ordered to be continued till the decision of the Tribunal. Rule is made absolute accordingly with no order as to costs.